U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 22 2006

SRC 05 145 51088

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marie Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate at the University of North Carolina (UNC), Chapel Hill. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner conducts genetic research related to cancer. Counsel states that the petitioner's "publications have already been cited . . . more than **200 times**" (counsel's emphasis). Information from a citation database confirms this number, and also shows only a small number of self-citations by the petitioner and/or his collaborators. The heavy independent citation of the petitioner's published work is persuasive, objective evidence that the petitioner's work has had sustained and significant impact within his field.

The petitioner's initial submission includes letters from several witnesses, describing the petitioner's work at UNC and other institutions. For example, UNC Professor [redacted] states:

> [The petitioner] came to our university with unique skills and an impressive record in cancer biology both in academia and in industry. Researching the mechanisms of anti-cancer drug resistance at the University of Tokyo in Japan . . . [the petitioner] demonstrated the mechanism of why the same anthracyclines anticancer drug **aclacinomycin** is much more efficient than **adriamycin** in adriamycin-resistant tumors. . . .
>
> **[The petitioner's] research at** [redacted] has been just as impressive. Conducting cutting-edge research that dealt with the fundamental mechanisms by which heparanase and Matrix MetalloProtease regulate cancer metastasis, his research is directly related to potential cures for cancer metastasis. . . . [The petitioner] has deservedly received international reputation as an outstanding expert in the field of heparanase gene research. . . .

> [A]t UNC at Chapel Hill, [the petitioner] demonstrated that the new degradation regions are present in human E2F1 protein. This research has offered new insights into the mechanism by which E2F1 alters cell cycle and apoptosis, two major reasons in cancer biology. [The petitioner's] research contributes fundamental knowledge that undoubtedly will lead to new anticancer drugs and related therapies.

Other witnesses describe this research in varying degrees of technical detail. Most of the witnesses appear to have collaborated with the petitioner, the apparent exception being Professo[redacted] of the M.D. Anderson Cancer Institute, who states that the petitioner's "research provided not only a novel and innovative pathway for linking anti-cancer drug chemotherapy with oncogene, but also a novel target for the development of new drugs to treat metastasis and cancer related diseases."

On June 3, 2005, the director issued a request for evidence, stating: "The record does not establish that self-petitioner's accomplishments are substantially greater than [those of] other[s] working in his or her field of expertise." In response to this notice, the petitioner has submitted several additional letters, some of which are from independent witnesses. For instance, Dr. [redacted] an associate professor at Louisiana State University, states:

> I do not know [the petitioner] personally, but I am familiar with his research efforts through his impressive publications. Among his important contributions to our field is his demonstration that the oncogene c-Myc is related anti-cancer drug resistance and his discovery of the human *heparanase (hpse-1)* gene. As the *hpse-1* gene is highly related to cancer metastasis and angiogenesis, [the petitioner's] findings are a breakthrough that is leading to a new era in the search for anti-metastasis and angiogenesis drugs.

The heavy citation of the petitioner's published work serves as vital corroboration of the witnesses' claims.

The director denied the petition on August 29, 2005. The director's denial notice contains no specific discussion of the merits or deficits of the petitioner's claim of eligibility. The notice reads, in part:

> The self-petitioner has submitted both initial filing evidence and additional post filing evidence.
>
> Additional post filing evidence is subject to *Matter of Izummi*.
>
> Representation has provided a brief or statement.
>
> Representation's statements are subject to *Matter of Obaigbena* and *Matter of Ramirez-Sanchez*.

The decision contains no description or discussion of the evidence or of counsel's "brief or statement"; the director simply acknowledged their submission. The decision offers no explanation of the significance of the case law cited in the above passage.

The director's decision contains no discussion of the petitioner's claims except for the statement that the petitioner is a "research associate." The stated grounds for denial are so generic that the petitioner has not had a meaningful opportunity to offer a substantive appeal. The wording of the decision offers no obvious indication that the author of the decision has examined the record in any detail.

We concur with counsel's assertion on appeal that the director "did not give proper weight to the value of these testimonials from leading experts in the field nor to the more than 200 citations of Petitioner/Appellant's papers. These facts show that Petitioner Appellant has commanded the respect and attention of scientists outside of his circle of colleagues." The director did not even acknowledge the petitioner's evidence, much less explain why that evidence was found to be deficient.

Counsel correctly notes that the AAO has, in the past, remanded decisions when the director's decision was as vague as the one issued to this petitioner. While the cited remand order is not a published, binding precedent decision, the AAO would likely have used similar reasoning to remand the present decision. Upon review of the record, however, we find the evidence to be so strongly favorable to the petitioner that we see no constructive purpose in delaying the approval of the petition by remanding the matter for a new decision.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.